

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 09/678,313 Confirmation No.: 5724
Applicant : Blenk
Filed : October 3, 2000
Title : System and method for automated, reader-based filtration of literary
works at Internet-related submission site
TC/Art Unit : 3623
Examiner: : Catherine Michelle Tarae
Docket No. :
Customer No. : 21967

APPEAL BRIEF

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APPEAL BRIEF

In response to the Office Action dated January 27, 2006 finally rejecting pending claims 1-36, appellant respectfully requests that the Board of Patent Appeals and Interferences reconsider and withdraw the rejections of record, and allow the pending claims, which are attached hereto as an Appendix.

I. Real Party In Interest

The real party in interest is Christopher W. Blenk, the inventor.

II. Related Appeals And Interferences

There are no known related appeals.

III. Status Of Claims

Claims 1-5, 8-12, 15-19, 22-26, 35 and 36 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,260,064 to Kurzrok ("Kurzrok") in view of U.S. Patent No. 6,948,069 to Teppler ("Teppler"). Claims 6, 7, 13, 14, 20, 21 and 27-34 stand rejected as allegedly being unpatentable over Kurzrok, Teppler and further in view of U.S. Patent No. 6,473,084 to Philips et al. ("Philips"). These rejections of claims 1-36 are appealed.

IV. Status Of Amendments

No amendments to the claims have been filed subsequent to the final rejection dated January 27, 2006.

V. Summary Of Claimed Subject Matter

A. Explanation of Independent Claim 1

A system for providing reader-supplied evaluation of a sample of an authored work for potential publication of the work comprising:

an author interface module (e.g., 104, 202, 214, 224, pg. 9, ll. 6-18, p. 10, ll. 6-9, pg. 10, l. 12-pg. 11, l. 3, pg. 17 ll. 3-5), operably connected to the Internet, for receiving only a portion of a work from an author to be reviewed via the Internet;

storage means (e.g., 106, 202, 216, pg. 10, l. 12-pg. 11, l. 3, pg. 12, l. 17 - p. 13, l. 2) for storing the portion of the work along with other portions of works for review;

a reader interface module (e.g., 124, 202, 214, 224, pg. 11, l. 4-pg. 12, l. 16) for receiving a request from a reader to review the portion of a work stored in the storage means;

work presentation means (e.g., 124, 202, 214, 224, pg. 11, l. 4-pg. 12, l. 16) for presenting the portion of a work to the reader based on the reader's request;

security means (e.g., 202, pg. 16, l. 20 - pg. 17, l. 15) for implementing at least one security mechanism to limit the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship;

a review receiving module (e.g., 124, 202, 218, pg. 11, l. 4-pg. 12, l. 16) for receiving evaluation of the portion of the work from the reader and placing the review in the storage means associated with the portion of the work; and

criteria determination means (e.g., 202, 218, pg. 13, ll. 2-14) for determining whether the portion of the work meets predetermined reader-satisfaction criteria.

B. Explanation of Independent Claim 15

A method for providing on-line evaluation of authored works for potential publication of the work comprising the steps of:

receiving a portion of a work from an author to be reviewed via an Internet communication from a remote computer system (e.g., 104, pg. 9, ll. 6-18, p. 10, ll. 6-9, pg. 10, l. 12-pg. 11, l. 3, pg. 17 ll. 3-5);

storing the portion of work along with other portions of works for review at a host computer system (e.g., 106, pg. 10, l. 12-pg. 11, l. 3, pg. 12, l. 17 - p. 13, l. 2);

receiving a request from a reader to review a portion of work (e.g., 124, pg. 11, l. 4-pg. 12, l. 16);

presenting one of the portions work to the reader based on the reader's request electronically over a network (e.g., 124, pg. 11, l. 4-pg. 12, l. 16);

implementing at least one security mechanism to limit the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship (e.g., pg. 16, l. 20 - pg. 17, l. 15);

receiving evaluation of the portion of work from the reader and placing the review in the storage means associated with the portion of work (e.g., 124, pg. 11, l. 4-pg. 12, l. 16); and

determining whether the portion of work meets predetermined reader-satisfaction criteria (e.g., pg. 13, ll. 2-14).

VI. Grounds Of Rejection To Be Reviewed On Appeal

The following grounds of rejection are to be reviewed on appeal:

1) The rejection of claims 1-5, 8-12, 15-19, 22-26, 35 and 36 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,260,064 to Kurzrok (“Kurzrok”) in view of U.S. Patent No. 6,948,069 to Teppler (“Teppler”); and

2) The rejection of claims 6, 7, 13, 14, 20, 21 and 27-34 stand rejected as allegedly being unpatentable over Kurzrok, Teppler and further in view of U.S. Patent No. 6,473,084 to Philips et al. (“Philips”).

VII. Argument

The rejections of the claims in this case exemplify classic hindsight reconstruction that is contrary to the law. Controlling Federal Circuit and Board precedent require that the Office Action set forth specific and particularized motivation for one of ordinary skill in the art to modify a primary reference to achieve a claimed invention. *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 664 (Fed. Cir. 2000) (“[t]o prevent a hindsight-based obviousness analysis, [the Federal Circuit has] clearly established that the relevant inquiry for determining the scope and content of the prior art is whether there is a reason, suggestion, or motivation in the prior art or elsewhere that would have led one of ordinary skill in the art to combine the references.”). Here, the Office Action cobbles together two or three references to allegedly yield the claims based on unsupported allegations of what is “conventional.” These references all relate to different features without any specific teaching to be modified or combined into the claims presented by applicant. Then, for each dependent claim, the Office Action selects from amongst the two or three as though that were all that was required. For each such additional modification to the primary reference, the Office has the burden to establish motivation for that additional modification as well.

Simply put, the Office has failed to set forth a *prima facie* case of obviousness for any of the independent claims. Additionally, the Office has also failed to establish a *prima facie* case of obviousness for the further modifications proposed to yield the dependent claims as well. Each of the specific claims and the impropriety of the rejections is addressed below.

A. Rejection of claims 1-5, 8-12, 15-19, 22-26, 35 and 36 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kurzrok in view of Teppler

1. Kurzrok and Teppler fail to disclose “criteria determination means for determining whether the portion of the work meets predetermined reader-satisfaction criteria” from claim 1 or “determining whether the portion of the work meets predetermined reader-satisfaction criteria from claim 15

Claims 1 and 15 recite determining whether the portion of the work meets predetermined reader-satisfaction criteria. Explicit in this recitation is that there is a “predetermined reader-satisfaction criteria” against which the portion of the work is measured. For example, the application describes a predetermined reader-satisfaction criteria of “60% positive reviews” (and then provides examples of addition, higher percentages that are to be met) against which a work is judged. The Office Action cites Kurzrok at col. 3, line 65 - col. 4, line 60. This section describes, at most, a rating of an article or work, but does not describe determining whether a predetermined reader-satisfaction is met.

2. The proposed combination of Kurzrok and Teppler to provide the “security means” limitation is improper and flawed

As amended, claim 1 recites a security means that “limits the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship.” Similarly, claim 15 recites a method that performs that step.

Kurzrok fails to disclose such a feature as acknowledged by the Office Action. Indeed, of the portions cited related to Kurzrok, the first does not mention security related to authors at all. *See* Kurzrok, Col 3, lines 33-40;

“Starting in step 202, a reader requests access information related to a subject of interest using ISP 22. At the host site, the request is received and, in response, information is retrieved from memory 16 (step 203) which is descriptive of the pages of the subject site including zones 100, 102, 104, 106. This information is returned to the reader site where in responses the zones 100, 102, 104, 106 are displayed in standard manner (Step 204).”

At most, this focuses on security as it relates to readers. Similarly, the second portion (Kurzrok, col. 5, lines 1-8) focuses on password protecting access to the system. Kurzrok fails to disclose or suggest any need to provide security related to the authorship of portions of works and thus, clearly fails to even suggest, alone, the need for, desirability of, motivation to provide, or suggestion to include, a “ **security means** for implementing at least one security mechanism to limit the ability of users to misappropriate credit **for the portion of work** if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship.”

The Office Action cites Teppler as allegedly disclosing time-stamping of electronic documents, including a specific example that recites “a physicist who has a brilliant idea can write about it with a word processor and have the document time-stamped. The time-stamp and document together can later prove that the scientist deserves the Nobel Prize, even though an arch rival may have been the first to publish.” Teppler, col. 11, lines 25-34.

The Office Action then engages in classic hindsight in asserting that “at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of

Kurzrok to utilize a time-stamp mechanism as disclosed by Teppler as a security means for checking who submitted a portion of a work first because doing so provides an accurate means of determining who submitted a document first, and therefore, determining the original author of the document.” Office Action at pages 4-5.

This analysis is flawed for several reasons. First, the Office Action is unable to cite anything from Kurzrok, Teppler or otherwise as to *why* one of ordinary skill would be motivated to “provide an accurate means of determining who submitted a document first. As discussed above, Kurzrok fails to discuss security as to authorship. Second, at most, Teppler teaches use of time-stamping for determining date of *creation* not submission to another party. So, the Office has failed to provide any motivation why one would use time stamping at the time of submission because neither Kurzrok or Teppler disclose such a feature.

Accordingly, the rejections of claims 1-5, 8-12, 15-19, 22-26, 35 and 36 under 35 U.S.C. § 103(a) based over Kurzrok in view of Teppler should be reversed.

B. Claims 3, 9, 17 and 23 Are Separately Patentable

Claims 3, 9, 17 and 23 recite features related to “the percentage of readers that would purchase the work.” Kurzrok does not disclose this feature. Moreover, the Office Action’s unsupported assertion that it would have been obvious is simply unfounded. Kurzrok describes a rating system for web content and provides no indication that any of such content is anything but free to the user. A rating by a reader that such content is excellent or good *does not necessarily* correlate to an indication that the person would “purchase the work” if a price were to be charged. For example, many readers find the content on many news websites very informative and might rate that content excellent. However, very few news websites are able to charge readers for content. Therefore, absent some suggestion, motivation or other reason to modify

Kurzrok, the Office fails to provide any evidence to support an obviousness rejection of these additional claims.

C. Claims 4 and 18 Are Separately Patentable

Claims 4 and 18 further recite determining whether a predetermined number of reviews have been made prior to determining whether the criteria is met. As discussed above, Kurzrok does not disclose use of a predetermined reader-satisfaction criteria and thus, also fails to disclose or suggest having a predetermined number of reviews prior to performing that step.

D. Claims 5, 8, 19 and 22 re Separately Patentable

Claims 5 and 19 further recite “utilizing multiple rounds of criteria and determines whether a predetermined number of reviews has been made for each round prior to evaluating whether the reader-satisfaction criteria have been met.” In addition, claims 8 and 22 recite “the reader-satisfaction criteria are different for each round.” As discussed above, Kurzrok does not disclose use of a predetermined reader-satisfaction criteria and certainly fails to disclose having multiple rounds of criteria (claims 5 and 19) or using different criteria (claims 8 and 22). The section of Kurzrok cited by the Office Action merely discussed accumulating reviews. Accumulation of reviews does not necessarily involve multiple rounds even if the reviews could be construed as providing criteria.

E. Claims 10, 11, 24 and 25 Are Separately Patentable

Claims 10, 11, 24 and 25 further recite “wherein the predetermined number of reviews is based on demographics of the readers so that the criteria determination means evaluates the reader-satisfaction criteria after certain numbers of readers from each of a plurality of demographics has evaluated the work” which is also not disclosed in Kurzrok. Again, Kurzrok does not disclose using predetermined reader-satisfaction criteria, but additionally, there is no disclosure in Kurzrok of ensuring that a predetermined number of reviews from a certain

demographic has been received before making the criteria determination. The section of Kurzrok cited merely mentions that demographics of readers may be received, but does not disclose using that information as part of the criteria determination process/system.

F. Claim 35 is Separately Patentable

Claim 35 recites “the at least one security mechanism comprises providing only a portion of the work to limit access of the reader to the entirety of the work” which is also not disclosed in Kurzrok. The section cited by Kurzrok discussed password protection of the entire work - not providing only a portion of the work to limit access to the entirety of the work.

G. Claims 6, 7, 13, 14, 20, 21 and 27-34 Are Separately Patentable

The proposed combination of Kurzrok, Teppler and Philips suffers from the same deficiencies as discussed above for the proposed Kurzrok/Teppler combination. Further, the Office fails to provide a suggestion as to why the Kurzrok/Teppler combination would be modified to add the various features of claims 6, 7, 13, 14, 20, 21 and 27-34 in view of Philips. The Office’s proposed motivation (ensuring that only work that is interesting is presented) apparently is based on Philips. Why one of ordinary skill in the art working with Kurzrok’s system would want to remove content from the Kurzrok system, however, is not described by the Office. There is no suggestion that the Kurzrok system has a bandwidth issue where a certain number of slots for articles is available as in Philips. Accordingly, there is no suggestion why one would remove a poorly rated article instead of other options - moving its location in the site, showing it as having a poor rating, etc. Indeed, many sites today list articles with poor ratings to demonstrate that their rating system is effective and that not all elements being rated have good ratings.

VIII. Conclusion

Because the cited references, taken either singly or in combination, fail to teach or suggest the combinations set forth in the pending claims, and further fail to provide any motivation or suggestion of the desirability of modifying the structures or methods to arrive at the claimed combinations, appellant submits that the pending claims are allowable over the cited references. Accordingly, appellant respectfully requests that the Board reverse the prior art rejections set forth in the Action, and allow all of the pending claims.

Respectfully submitted,



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Brian M. Buroker
Registration No. 39,125

Hunton & Williams
1900 K. St., NW, Suite 1200
Washington, D.C. 20006-1109
(202) 955-1894

IX. APPENDIX A - Pending Claims

1 A system for providing reader-supplied evaluation of a sample of an authored work for potential publication of the work comprising:

an author interface module, operably connected to the Internet, for receiving only a portion of a work from an author to be reviewed via the Internet;

storage means for storing the portion of the work along with other portions of works for review;

a reader interface module for receiving a request from a reader to review the portion of a work stored in the storage means;

work presentation means for presenting the portion of a work to the reader based on the reader's request;

security means for implementing at least one security mechanism to limit the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the portion of work from the author that may be used by the system in resolving disputes regarding original authorship;

a review receiving module for receiving evaluation of the portion of the work from the reader and placing the review in the storage means associated with the portion of the work; and

criteria determination means for determining whether the portion of the work meets predetermined reader-satisfaction criteria.

2. The system of claim 1 further comprising analysis means for generating analysis information regarding the work based on the reader-feedback.

3. The system of claim 2 wherein the analysis indicates the percentage of readers that would purchase the work.

4. The system of claim 1 wherein the criteria determination means determines whether a predetermined number of reviews have been made prior to evaluating whether the reader-satisfaction criteria have been met.

5. The system of claim 4 wherein the criteria determination means utilizes multiple rounds of criteria and determines whether a predetermined number of reviews has been made for each round prior to evaluating whether the reader-satisfaction criteria have been met.

6. The system of claim 5 wherein the criteria determination means removes a work from availability for presentation to a reader if the work does not meet the predetermined reader-satisfaction criteria.

7. The system of claim 1 further comprising reader-feedback means for providing reader feedback to the author if a work is rejected to enable the author to revise the work for resubmission.

8. The system of claim 5 wherein the reader-satisfaction criteria are different for each round.

9. The system of claim 8 wherein the reader-satisfaction criteria comprise a willingness to purchase and wherein the percentage of readers that find the work willing to purchase increases with each round.

10. The system of claim 4 wherein the predetermined number of reviews is based on demographics of the readers so that the criteria determination means evaluates the reader-satisfaction criteria after certain numbers of readers from each of a plurality of demographics has evaluated the work.

11. The system of claim 10 wherein the work presentation means selects a work from the storage means based on demographics of the reader and the number of readers from each demographic that the work needs to meet the demographic reader requirements.

12. The system of claim 1 wherein the work presentation means selects a work based on a genre selected by the reader.

13. The system of claim 1 further comprising a membership module that creates a membership for the author prior to work submission that includes a contract in which the member/submitter agrees to pay a percentage of royalties earned from the work when it is published.

14. The system of claim 13 wherein the membership module also collects a fee for each submission of a work for review from the member.

15. A method for providing on-line evaluation of authored works for potential publication of the work comprising the steps of:

receiving a portion of a work from an author to be reviewed via an Internet communication from a remote computer system;

storing the portion of work along with other portions of works for review at a host computer system;

receiving a request from a reader to review a portion of work;

presenting one of the portions work to the reader based on the reader's request electronically over a network;

implementing at least one security mechanism to limit the ability of users to misappropriate credit for the portion of work if the work were to be resubmitted to the storage means by another author including a timestamp associated with a time of first receipt of the

portion of work from the author that may be used by the system in resolving disputes regarding original authorship;

receiving evaluation of the portion of work from the reader and placing the review in the storage means associated with the portion of work; and

determining whether the portion of work meets predetermined reader-satisfaction criteria.

16. The method of claim 15 further comprising the step of generating analysis information regarding the work based on the reader-feedback.

17. The method of claim 16 wherein the analysis indicates the percentage of readers that would purchase the work.

18. The method of claim 16 wherein the criteria determination step comprises determining a predetermined number of reviews have been made prior to evaluating whether the reader-satisfaction criteria have been met.

19. The method of claim 18 wherein the criteria determination step comprises multiple rounds of criteria determination, wherein each round has a predetermined number of reviewers and a reader-satisfaction criteria.

20. The method of claim 19 further comprising the step of removing a work from availability for presentation to a reader if the work does not meet the predetermined reader-satisfaction criteria.

21. The method of claim 20 further comprising the step of providing feedback to the reader if a work is rejected to enable the reader to revise the work for resubmission.

22. The method of claim 20 wherein the reader-satisfaction criteria are different for each round.

23. The method of claim 22 wherein the reader-satisfaction criteria comprise a willingness to purchase and wherein the percentage of readers that find the work willing to purchase increases with each round.

24. The method of claim 22 wherein the predetermined number of reviews is based on demographics of the readers so that the criteria determination means evaluates the reader-satisfaction criteria after certain numbers of readers from each of a plurality of demographics has evaluated the work.

25. The method of claim 24 further comprising the step of selecting a work to present to a reader based on demographics of the reader and the number of readers from each demographic that the work needs to meet the demographic reader requirements.

26. The method of claim 15 wherein the work presentation step involves selecting a work based on a genre selected by the reader.

27. The method of claim 15 further comprising the step of creating a membership for the author prior to work submission that includes a contract in which the member/submitter agrees to pay a percentage of royalties earned from the work when it is published.

28. The method of claim 27 further comprising the step of collecting a fee for each submission of a work for review from the member.

29. The method of claim 15 further comprising the step of assisting in publication of the work if predetermined reader-satisfaction criteria are established.

30. The method of claim 29 further comprising the step of issuing a certification of approval from a host entity.

31. The method of claim 30 further comprising the step of licensing the publisher with the right to post the certification with the work.

32. The method of claim 30 further comprising the step of licensing the author with the right to post the certification with the work.

33. The method of claim 15 further comprising the step of providing on-line publication of an entire work that meets the predetermined reader-satisfaction criteria.

34. The method of claim 33 further comprising deriving revenue from the publication of the work.

35. The system of claim 1 wherein the at least one security mechanism comprises providing only a portion of the work to limit access of the reader to the entirety of the work.

36. The system of claim 1 wherein the at least one security mechanism comprises providing only a portion of the work to limit access of the reader to the entirety of the work.

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REMARKS

Applicant has considered the pending Office Action and references cited and have elected to amend the pending claims to more clearly describe the inventions. Specifically, independent claims 1 and 15 have been amended. No new matter is added with these amendments.

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X. Evidence Appendix

None.

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XI. Related Proceedings Appendix

None.